IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3243 OF 1997

WITH

NOTICE OF MOTION NO.2037 OF 2003

WITH

NOTICE OF MOTION NO.779 OF 2004

IN

SUIT NO.3777 OF 1997

Shantanu N. Desai ... Plaintiff

v/s

Dushyant alias Kishore Nanubhai Desai and ors. ... Defendants

Mr P.N. Modi i/b M/s RMG Law Associates for Plaintiff.

Mr Pradip Sancheti i/b Mr R.A.K. Najam-es-sani for Defendants.

CORAM : D.K.DESHMUKH J.

DATE : 13TH AUGUST 2004

P.C.: -

1. Notice of motion No.3243 of 1997 is taken out by the plaintiff and notices of motion No.2037 of 2003 and 779 of 2004 are taken out by the defendants and they arise out of the ad-interim order passed in plaintiff's notice of motion No.3243 of 1997. The learned counsel for both the sides are agreed that following order would meet the ends of justice.

1) Notice of motion No.3243 of 1997 is permitted to be withdrawn with liberty to apply again for appropriate reliefs.

2) The Prothonotary and Senior Master of this Court is directed to appoint an Officer to take inventory of the books of account and records, documents and movable properties belonging to the partnership firm M/s Nanubhai and Co. lying within the office premises viz. First Floor, Bhogilal Hargovinddas Building, K. Dubash Road, Mumbai 400 023 or outside. The Commissioner is

appointed for taking inventory with a direction that the work of taking inventory shall be completed within a period of two weeks from the date of appointment. The inventory shall be done initially at the expenses of the defendants.

3) The learned counsel appearing for defendants submits that pursuant to the ad-interim order passed in notice of motion No.3243 of 1997, till that order was set aside by this Court, the plaintiff was carrying on the business of the Firm and therefore, the plaintiff should be issued a direction to file an affidavit disclosing the business carried out during that period. the learned counsel appearing for plaintiff, on the other hand, submits that all the details are available in the Office of the Firm of which inventory is being taken and therefore, considering the present condition of the plaintiff, no such direction should be issued. In this views of the matter therefore, in my

opinion, following order in this regard would meet the ends of justice.

. After completion of the work of inventory, the Commissioner shall submit his report to the Prothonotary and Sr. Master of this with a copy to the plaintiff and the defendants. After going through the report of the Commissioner, in cased the defendants find that they have not received all the details about the business carried out during the aforesaid period, the defendants shall be at liberty to take out appropriate proceedings either in this suit or before the Arbitrator. Similarly, the plaintiff shall also be at liberty to take out appropriate proceedings. The learned counsel appearing for plaintiff has stated that except the record that is lying in the Office of the Firm, he has handed over entire record to the defendants. Presently, the plaintiff does not have any record in relation to the Firm. The learned counsel appearing for plaintiff

states that the plaintiff has retired from the Firm and if any forms are required to be signed for giving effect to the retirement, on the forms being produced by the defendants, the forms will be signed. All the notices of motion are disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.